

02280.002620.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
	:	Examiner: Thierry I. Pham
NEIL A. WILLCOCKS ET AL.)	
	:	Group Art Unit: 2625
Application No.: 09/587,108)	
	:	Confirmation No. 6805
Filed: June 2, 2000)	
	:	
For: HIGH RESOLUTION INK-JET)	
PRINTING ON EDIBLES AND	:	
PRODUCTS MADE)	

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

DECLARATION OF DANA MICHAEL

I, Dana Michael, declare as follows:

I. Personal Background

1. I am employed by Mars, Incorporated, as a Research and Development Director of the Mars Direct, Inc. subsidiary.
2. I have been employed at Mars Incorporated for 23 years, and have worked on projects relating to product and business development for my entire career.
3. I am familiar with the sales data that is presented with this Declaration and have extensive experience interpreting such data.

II. Commercial Success of My M&M'S®

4. I am familiar with the above-captioned application including the presently pending claims, which I understand to require a system in which a consumer selects an image that is ink-jet printed in high resolution on sugar shell candy, such as M&M'S® Brand Milk Chocolate Candies and Skittles® Brand Jelly Beans.

5. I understand that all of the claims of the above-captioned application have been rejected as allegedly being obvious, in an Office Action dated April 28, 2009.

6. I make this Declaration to provide my expert opinion with respect to the commercial success of the claimed invention, especially as evidenced by Mars' MY M&M'S® business, and in particular, as to the nexus of the features described in the claims and the commercial success of Mars' MY M&M'S® business.

7. Claim 31, which I understand to be representative of the systems claimed in this application, recites "a system for enabling a consumer to submit a customizable image to be printed directly on a non-planar surface of a sugar shell candy or a jellybean." This language describes the MY M&M'S® business which enables consumers to submit a customized image from their home computer and obtain customized M&M'S ® Brand Milk Chocolate Candies, for example.

8. Claim 31 requires a computer, adapted to communicate with a consumer's computer, and an ink-jet printer adapted to receive image data from the computer and print directly on, for example, a sugar shell candy or jellybean. The images obtained from the MY M&M'S® website are high quality images, having a resolution greater than about 200 dpi. I understand that the MY M&M'S® business method requires all of the claim elements.

9. Prior to the invention of the custom-printed sugar shell candies according to the present claims, it was possible for consumers to purchase custom color M&M'S® Brand Milk Chocolate Candies online, in any one of twenty-one available colors (the "custom colors product"). However, the custom-printed product, according to the present claims, was not available.

10. The custom colors product was offered online to consumers as early as 1997, but in 40 lb. lots. An 8 oz. offering was introduced online in May 2001. Custom-printed M&M'S® Brand Milk Chocolate Candies (the "custom-printed product"), were introduced online in March 2005. The data represented in the attached graphic run from 2005, when the custom-printed product was introduced, to 2008, which is the last full year for which data is available.

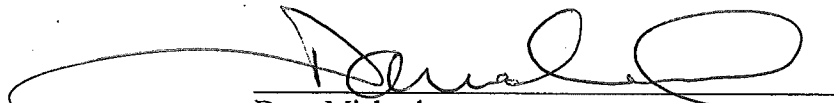
11. Exhibit 1 is a chart showing the relative growth in sales of candies having custom colors versus candies having custom-printed images according to the invention, after the introduction of the custom-printed product. As can be seen from the chart, the custom-printed product had more commercial success than their non-printed custom counterparts. As both products are available through the same website, the difference in sales growth is attributable to the difference between the products, *i.e.*, the difference between a custom color product that is not according to the invention, and a custom-printed product that is according to the invention.

12. At the present time, the custom colors segment of the MY M&M'S® business accounts for only about five percent or less of overall sales of MY M&M'S® online. Thus, a significant portion of the growth in the online sales market has been generated by the availability of the custom-printed confectionery items, showing a

clear nexus between the subject matter of the present claims, and the commercial success of the MY M&M'S® business overall.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Subscribed this 28 day of October, 2009



Dana Michael

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EXHIBIT 1

Relative Growth in Sales of Custom Colors Versus Custom Printed Images (2005-2008)

